IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 125/2007

Miss Dev Kanwar Soni & Ors.
Vs.
The State of Rajasthan and Ors.

Date of Order : 18/05/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. P.R.Singh for the petitioners.
Mr. B.L.Tiwari, Dy.G.A. For the respondents.

BY THE COURT:-

By the instant writ petition under Article 226 of the Constitution of India, the petitioners seek a direction to the respondents to the effect that while determining the final merit list of Physical Teacher Gr.II, marks for certificate of only one co-curricular activity which carries highest marks may be taken into account and also a direction to the respondents to take 100% marks of professional degree into account for determination of merit for the purpose of appointment on the post of Physical Teacher Gr.II.

I have heard learned counsel for the parties.

The facts in brief giving rise to the instant writ petition are that the respondent No.3 issued an advertisement published in Rajasthan Patrika on 20.8.2003 inviting application for appointment on the post of Senior Teacher/ Physical Education Teacher Gr.II. The vacancies were to be filled in as per the determination of the vacancies of the year 2003-04. The petitioners applied for the post of Physical Teacher Gr.II in pursuance of the advertisement Annex.19 in the category of other backward class. There had been some litigation before this Court and interim stay order was passed, however, the same was vacated as per news item published in Rajasthan Patrika 19.12.2006 and thereafter the merit list was prepared and the candidates were called for interview and finally select list was published on 11.1.2007. The petitioners were also called for interview but did not come in merit and therefore, the petitioners have challenged the procedure adopted by the respondents for determination of the merit.

A reply to the writ petition has been filed by the respondents stating therein that the respondent State under policy decision awards the additional marks for the post of Physical Teacher Gr.III for the Sports and co-curricular activities for which a circular has been issued by the Director, Secondary Education, Rajasthan, Bikaner dated 31.7.2003 which provides the additional bonus marks to all the candidates who participated

in the sports at the State level and National level as also for co-curricular activities i.e. National Cadet Core (NCC), Scout Guide Class-I and Class II etc. as also for the Music and dance competition at the State level as also National level. It has also been stated that the candidates who passed the degree of B.P.E. and B.P.E.D. have also been provided marks. However, it is submitted that the degree of B.P.E. is three years course, whereas the B.P.E.D. is of only one year course and therefore, keeping in view the length of courses, different marks have been prescribed for both the courses.

It is contended by learned counsel for the petitioners that the additional bonus marks can only be awarded for the one activity which carries highest marks and not for different categories like sports, co-curricular activities- scouts, music and dance etc. It is further contended that allocation of different marks for B.P.E. and B.P.E.D. Degree in the ratio of 75% and 25% is arbitrary to the extent that the B.P.E. course and B.P.E.D. courses have been considered to be equivalent and therefore, there cannot be two different percentage for these two courses. Learned counsel for the petitioners has relied on a decision of Hon'ble Supreme Court in Hoshiar Singh Vs. State of Haryana and Others AIR 1993 SC 2606 and a Division Bench decision of this Court in State of Rajasthan Vs. Banwari Lal Upadhyaya 2001 (2) W.L.C. (Raj.) 495.

Learned Deputy Government Advocate appearing for the respondents submits that awarding of bonus marks is a policy matter of the State and in order to provide the better avenues to the Athletes, sportsmen and those candidates who in addition to their educational qualification possess any sports, co-curricular activities- NCC, Scouts etc., marks are being awarded and awarding of such marks has been held to be in accordance with law in various decisions of this Court. It is further contended that so far as providing of different marks for the degrees of BPE and BPED is concerned, both the degrees carry different duration of the course and therefore, different marks made available for different courses cannot be said to be arbitrary and erroneous in any manner.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

In Hoshiar Singh Vs. State of Haryana and Ors. (supra) the question came to be considered by Hon'ble Supreme Court with regard to standards of physical fitness laid down in advertisement within competence of authority to relax the standards. Hon'ble Supreme Court held that it was not permissible for the Board to relax the standards of physical fitness as prescribed in the advertisement and treat candidates who had passed in three out of five items of the one star physical test mentioned in the said advertisement as having

qualified in the physical fitness test. The selection of persons who failed to qualify in all the five items prescribed for the test was, therefore, rightly quashed by the High Court.

In the instant case, there is no question of relaxing the standard or requirement of the eligibility of the candidates as advertised in the advertisement Annex.19. The selection made and the merit list prepared for the physical teachers are strictly in accordance with the advertisement and the advertisement is in conformity with the governing rules and therefore, the decision relied on by the petitioners is of no help to them.

In State of Rajasthan Vs. Banwari Lal Upadhayaya (supra), the Division Bench of this Court held that the rule does not provide any other additional qualification or the qualification that a candidate has to pass the Secondary Examination with particular subject(s). The Bench was of the view that the Govt. cannot provide any additional qualification that the Secondary Examination has to be passed by the candidate with particular subjects.

The controversy involved in the instant case is altogether different than the controversy came to be considered by the Division Bench in State of Rajasthan Vs. Banwari Lal Upadhayaya (supra), and therefore, the decision relied on by learned counsel for the petitioners turns on its own facts and is of no help to the petitioners.

It is purely a policy matter of the State Government prescribing the different marks for one year degree of D.P.Ed./ B.P.Ed. and three years degree course of B.P.E.

In Emarata Ram Pooniya and 8 Ors.Vs. State of Rajasthan 2005 (2) W.L.C. (Raj.) 358, a Division Bench of this Court held that it is purely a policy matter and further the challenge has been made at a stage when selections have already been made. It was further held that the policy decision with respect to the marks secured in additional paper cannot be said to be arbitrary or unreasonable. After all, higher marks obtained in examination are taken into consideration for determination of merit and on these premises, declined to interfere with the policy decision with regard to allocation of the marks for different categories.

In the instant case, providing different marks for the degrees of D.P.Ed./ B.P.Ed. and three years degree course i.e. B.P.E. is purely a policy decision of the respondent State and in my view, it cannot be said to be arbitrary or unreasonable or beyond the rule making power of the State. So far as awarding of additional marks for the sports, co-curricular activities- NCC, Scouts, music and dance etc. are concerned, each category has its separate marks and highest marks for that particular category is to be taken into account for determining the merit of the candidates and in the instant case, the respondents acted in

conformity with the policy decision by providing additional marks to the candidates who participated in the sports, co-curricular activities- NCC, Scouts, Music and dance etc. and therefore, it is not open for the petitioners to question the awarding of such marks limiting to one of the activities only.

In the circumstances, therefore, I do not find any merit in the writ petition. The writ petition is therefore, dismissed. No order as to costs.

(H.R.PANWAR),J.

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